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S. R. A.—A. M. S. 107

Revised November, 1959

United States Department of Agriculture

AGRICULTURAL MARKETING SERVICE

SERVICE AND REGULATORY ANNOUNCEMENTS 107

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE FOR THE ENFORCEMENT OF THE PRODUCE AGENCY ACT

(Reprint of Title 7, Ch. I, Pt. 48 of the Code of Federal Regulations)

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Pursuant to the notice published in the FEDERAL REGISTER September 3, 1959 (24 F.R. 7127), the regulations (7 CFR 48.1-48.11) issued under the Produce Agency Act (44 Stat. 1355; 7 U.S.C. 494) and published in the FEDERAL REGISTER July 13, 1947 (12 F.R. 4287) and January 6, 1954 (19 F.R. 57) were amended, effective September 3, 1959, to read as follows:

DEFINITIONS

§ 48.1 Meaning of words.

Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 48.2 Definitions.

Unless the context otherwise requires, the following terms shall be construed as follows:

(a) "Act" means "An act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them truly and correctly to account for all farm produce received by them," approved March 3, 1927 (44 Stat. 1355; 7 U.S.C. 491-497).

(b) "Person" means an individual, partnership, association or corporation.

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) "Service" means the Agricultural Marketing Service, United States Department of Agriculture.

(e) "Deputy Administrator" means the Deputy Administrator for Marketing Services, or any officer or employee of the Service, to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his stead.

(f) "Director" means the Director of the Fruit and Vegetable Division of the Service, or any officer or employee of the Division to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Director to act in his stead.

(g) "Produce" means all fresh fruits and fresh vegetables generally considered by the trade as perishable fruits and vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character.

(h) "Truly and correctly to account" means, unless otherwise stipulated by the parties, that the consignee of produce shall, within ten days after the final sale is made of any produce received for sale on consignment in interstate commerce or in the District of Columbia, render to the consignor thereof a true and correct itemized statement of the gross sales as

well as all selling charges and all other charges or expenses paid and a statement of the net proceeds or deficit, and make full payment to the consignor of the net proceeds so received together with a full explanation of the disposition of any and all produce not sold.

(i) "Good and sufficient cause" means, with respect to destroyed, abandoned, discarded, or dumped produce, that the produce so dealt with had no commercial value, or that some other legal justification for so dealing with such produce existed, such as an order of condemnation by a health officer or definite authority from the shipper.

(j) "Commercial value" means any value that the produce may have for any purpose that can be ascertained in the exercise of due diligence by the consignee without unreasonable expense or loss of time.

ADMINISTRATION

§ 48.3 Director.

The Director shall perform, for and under the supervision of the Secretary and the Deputy Administrator, such duties as the Secretary or the Deputy Administrator may require in enforcing the provisions of the Act and the regulations issued thereunder.

VIOLATIONS

§ 48.4 Destroying or dumping.

Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another who, without good and sufficient cause, shall destroy or abandon, discard as refuse, or dump any produce, directly or indirectly or through collusion with any person, shall be considered to have violated the Act.

§ 48.5 False report or statement.

Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall be considered to have violated the Act if, knowingly and with intent to defraud, he makes any false report or statement to the person from whom such produce was received concerning the handling, condition, quality, quantity, sale, or disposition thereof.

§ 48.6 Failure to account.

Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another shall

be considered to have violated the Act if, knowingly and with intent to defraud, he fails truly and correctly to account to the person from whom such produce was received.

JUSTIFICATION FOR DUMPING

§ 48.7 Evidence to justify dumping.

Any person, receiving produce in interstate commerce or in the District of Columbia, having reason to destroy, abandon, discard as refuse or dump such produce, should, prior to such destroying, abandoning, discarding or dumping, obtain a dumping certificate or other evidence of justification for such action. Certification, showing that the produce has no commercial value, should be obtained from: (a) An inspector authorized by the United States Department of Agriculture to inspect produce; or (b) a health officer, or food inspector of any State, county, parish, city or municipality or of the District of Columbia. When no inspector or health officer, as designated in paragraph (a) or (b) of this section is available, affidavits as to the condition of the produce should be obtained from two disinterested persons having no financial interest in the produce involved or in the business of a

person financially interested therein, and who are unrelated by blood or marriage to any such financially interested person, and who, at the time of certification, and for a period of at least one year immediately prior thereto, have been engaged in the handling of the same general kind or class of produce with respect to which such affidavits are to be made. The certificate or affidavit obtained for justifying dumping should identify the produce to be dumped by giving the name of the shipper, any identifying marks or brands on the original container, the type of container, the commodity, the quantity, the date of inspection, and contain a short description of the condition of the produce to be dumped at the time of inspection. The name, address and title of the person or persons making such inspection should also be designated on the certificate or affidavit.

COMPLAINTS

§ 48.8 Filing of complaints.

Any person having reason to believe that the Act or the regulations in this part have been violated should submit promptly all available facts with respect thereto to the Director for investigation and appropriate action.

THE PRODUCE AGENCY ACT

As amended by Public Law 272, approved August 9, 1955
(44 Stat. 1355, as amended; 7 U.S.C. 491-497)

AN ACT To prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others and to require them truly and correctly to account for all farm produce received by them.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after June 30, 1927, any person, firm, association, or corporation receiving any fruits, vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character, hereinafter referred to as produce, in interstate commerce, or in the District of Columbia, for or on behalf of another, who without good and sufficient cause therefor, shall destroy, or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, or who shall knowingly and with intent to defraud make any false report or statement to the person, firm, association, or corporation from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, or who shall knowingly and with intent to defraud fail truly and correctly to account therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 and not more than \$3,000, or by imprisonment for a period of not exceeding one year, or both, at the discretion of the court.

SEC. 2. The Secretary of Agriculture is hereby authorized and directed to enforce this Act. It is hereby made the duty of all United States attorneys to prosecute cases arising under this Act, subject to the supervision and control of the Department of Justice.

SEC. 3. The Secretary of Agriculture may make such rules and regulations as he may deem advisable to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and may call upon any Federal department, board, or commission for assistance in carrying out the purposes of this Act; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law and make such expenditures for rent, outside the District of Columbia, printing, telegrams, telephones, books of reference, books of law, periodicals, newspapers, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be deemed necessary to the administration of this Act in the District of Columbia and elsewhere and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$25,000 to be available for expenditure during the fiscal year beginning July 1, 1927, and the appropriation of such additional sums as may be necessary thereafter to carry out the purposes of this Act is hereby authorized. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act, but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 4. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

Approved, March 3, 1927.

Amended, August 9, 1955.